places his signature thereon before delivery he is an indorser and . . . if the bill is payable to the order of the maker he is liable to all parties subsequent to the maker." A drew a bill on B to his own order. B accepted it and C indorsed it before delivery to A. A sued C and offered parol evidence that C signed with the intention to lend his credit to B in accordance with an agreement with A. *Held*, that the evidence is admissible. *Haddock, Blanchard & Co.* v. *Haddock*, 85 N. E. 682 (N. Y.).

Before the adoption of the Negotiable Instruments Law in New York a stranger who indorsed a bill in blank before delivery was presumably only a second indorser, but this presumption could be overcome by parol evidence that he intended to become liable to the payee. *Moore* v. *Cross*, 19 N. Y. 227. The theory was that the parol evidence did not change his character of indorser, but simply showed an authority in the maker to indorse without recourse to the anomalous indorser who was then taken to have indorsed back to the maker. This doctrine reconciles the present decision with § 113 of the Negotiable Instruments Law, for the parol evidence does not affect the defendant's liability as indorser. § 114 provides for liability to parties subsequent to the maker, but does not negative liability to the maker. Hence the court concludes that there is nothing in the statute inconsistent with the old rule which allowed parol evidence to show the true agreement between the payee and the anomalous indorser.

CARRIERS — DUTY TO ACCEPT AND CARRY PASSENGERS — PRIVATE CARRIERS. — The defendant company ran a steamer exclusively for the purpose of carrying visitors to and from its amusement park on an island. Its tickets included the ride on the steamer and admission to the park. The plaintiff was refused admission to the steamer because of former disorderly conduct. *Held*, that the defendant is not a common carrier to and from its island, and has a right to exclude the plaintiff. *Meisner* v. *Detroit Ferry Co.*, 118 N. W. 14 (Mich.).

A common carrier is one who undertakes by virtue of his calling to carry indifferently for all who may choose to employ him. *Iron Works* v. *Hurlbut*, 158 N. Y. 34. A private carrier is one who does not carry for all indifferently, but only under special circumstances. *Allen* v. *Sackrider*, 37 N. Y. 341. The duties of a common carrier are imposed on him because of the public nature of his employment. *McNeill* v. *Durham Ry. Co.*, 135 N. C. 682. The interest of the public must be concerned in his enterprise, and to find this the character of the business must be considered. *Sholl* v. *Coal Co.*, 118 Ill. 427. A railroad run exclusively for private purposes is not a common carrier, since the public has no equal right to use it. *Wade* v. *Cypress Lumber Co*, 74 Fed. 517. A private ferry running to and from the premises of an individual, who could refuse to admit anyone, has been held not to be in a public employment. *People* v. *Mago*, 69 Hun (N. Y.) 559. The public can hardly be said to be concerned in the service of the defendant to its island in the case considered. For example, the boats could undoubtedly cease running without violating any right of the public.

CHATTEL MORTGAGES — RECORDING AND REGISTRY — PRIORITY BETWEEN MORTGAGEES. — A took a chattel mortgage on goods subsequently to be acquired by B. The mortgage was not recorded for a month. After the execution but before the recording of this mortgage C sold goods to B and took a mortgage thereon for the purchase price. C's mortgage was recorded after A's and after the goods had been delivered to A upon condition broken. C brought replevin to recover the goods. *Held*, that he cannot recover. *Garrison* v. *Street & Harper Furniture, etc., Co.*, 97 Pac. 978 (Okl.).

Where the recording statute provides a definite period within which a chattel mortgage must be recorded, a mortgage so recorded will be valid from its execution even as against a lien attaching before the recording. *McCarthy* v. *Scisler*, 130 Ind. 63. Where the statute provides no period within which the mortgage is to be recorded, it must be done within a reasonable time. *Wilson*

v. *Milligan*, 75 Mo. 41. And if it is so recorded it should have the same retroactive effect. But in the principal case A's mortgage was not recorded within a reasonable time. *Wilson* v. *Milligan*, *supra*. In such circumstances it has been held that an intervening creditor who takes a mortgage without notice will be protected although the prior mortgage is recorded first. *Bank of Farmington* v. *Ellis*, 30 Minn. 270. *Cf. Crooks* v. *Stuart*, 2 McCrary 13. It is submitted that this view is more equitable and more in accord with the purpose of the statute than the holding in the principal case, and it would seem that the delivery of possession to A should not affect the decision; for there is no authority for giving delivery an effect different from that of recording.

CONFLICT OF LAWS — MARRIAGE — VALIDITY OF FOREIGN MARRIAGE. — A Wisconsin statute prohibited remarriage by a divorcee within a year after the decree rendered, and declared that a marriage so contracted would be held null and void. To evade this statute the plaintiff and decedent were married in Michigan within a year after the latter had obtained a divorce. *Held*, that the marriage is void. *Lanham* v. *Lanham*, 117 N. W. 787 (Wis.).

That the validity of a marriage is determined by the *lex loci contractus* is the general rule in this country. *State* v. *Richardson*, 72 Vt. 49. But it is within the power of a state to declare by statute that certain marriages will not be recognized. *Pennegar* v. *State*, 87 Tenn. 244. And when a marriage valid where celebrated comes within the terms of such a statute, the question to be determined is one of legislative intent. *State* v. *Kennedy*, 76 N. C. 251. In this determination the courts refuse to construe a statute literally unless it reflects a state public policy. See *Van Voorhis* v. *Brintnall*, 86 N. Y. 18. And by the weight of authority no such policy is involved in statutes dealing with the remarriage of divorced persons. *Commonwealth* v. *Lane*, 113 Mass. 458. *Cf. McLennan* v. *McLennan*, 31 Ore. 480. Thus, the statute is held to apply only to marriages celebrated within the state. *Willey* v. *Willey*, 22 Wash. 115. In many states, however, such judicial legislation is not upheld, and the evasion of the law sought to be effected by temporary resort to a foreign jurisdiction, is not allowed. *Kruger* v. *Kruger*, 36 Nat. Corp. Rep. 442 (Ill., May, 1908); *Stull's Estate*, 183 Pa. 625. On principle these decisions are sound, but their effect upon the rights of innocent parties is deplorable. See *Commonwealth* v. *Lane*, *supra*.

CONFLICT OF LAWS — RECOGNITION OF FOREIGN PENAL LAWS — ASSESSMENTS. — An action was brought in England by an Australian municipality to recover a sum levied by it for street improvements. An Australian statute gave a right of action for such assessments. *Held*, that the action does not lie. *Sydney Municipal Council* v. *Cook*, 25 T. L. R. 6 (Eng., K. B. D., Oct. 15, 1908). See NOTES, p. 292.

CONTRACTS — DIVISIBLE CONTRACTS — PART PERFORMANCE OF INDIVISIBLE CONTRACT. — The plaintiff under an entire contract had furnished labor and material in installing a heating plant in the defendant's building, which was destroyed before the work was completed. The units of the plant had become part of the defendant's land when put in place. *Held*, that the defendant must pay in terms of the contract, irrespective of the benefit he has derived. *Dame* v. *Wood*, 70 Atl. 1081 (N. H.).

The general rule is that, when a party has contracted to do an entire work for a specific sum, he cannot recover unless the work be done. *Appleby* v. *Myers*, L. R. 2 C. P. 651. Relief is usually given quasi-contractually, however, to prevent the unjust enrichment of the defendant. *Britton* v. *Turner*, 6 N. H. 481. But a recovery for part performance such as was allowed in the present case is directly opposed to all the English decisions on the subject. See *Appleby* v. *Myers*, *supra*. It is analogous to the American rule that gives a servant employed on an entire contract, who is discharged for cause, a right to recover in terms of the contract. *Hildebrand* v. *Am. Fine Art Co.*, 109 Wis. 171. But that extension of the general rule is unsound in principle. See *Tim-*